

CONTRACT #5
RFS # 347.11-103

Department of Revenue

VENDOR:
Scan-Optics, Inc.

REQUEST: NON-COMPETITIVE CONTRACT

RECEIVED

MAR 3 1 2005

FISCAL REVIEW

APPROVED

Commissioner of Finance & Administration

Date:

Each of the request items below indicates specific information that must be individually detailed or addressed as required. A REQUEST CAN NOT BE CONSIDERED IF INFORMATION PROVIDED IS INCOMPLETE, NON-RESPONSIVE, OR DOES NOT CLEARLY ADDRESS EACH OF THE REQUIREMENTS INDIVIDUALLY AS REQUIRED.

RFS #	347.11-103		
STATE AGENCY NAME :	Tennessee Department of Revenue		
SERVICE CAPTION :	Technical support and development upgrades on DOR's 900T and 900M scanners using ScanGen software and VISTA key from image data software.		
PROPOSED CONTRACTOR :	Scan-Optics, Inc		
CONTRACT START DATE : (if date is < 60 days after F&A receipt, attach required explanation)	August 1, 2005		
LATEST POSSIBLE END DATE : (including ALL options to extend)	July 31, 2010		
TOTAL MAXIMUM COST : (including ALL options to extend)	\$500,00		
APPROVAL CRITERIA : (select one)	<input type="checkbox"/> use of Non-Competitive Negotiation is in the best interest of the state <input checked="" type="checkbox"/> only one uniquely qualified service provider able to provide the service		
ADDITIONAL REQUIRED REQUEST DETAILS BELOW (address each item immediately following the requirement text)			
(1) description of service to be acquired :			
<p>Scan-Optics, Inc. provides technical support and development upgrades on the Department of Revenue 9000T and 9000M scanners using ScanGen software and VISTA key from image data capture software. This system scans certain tax returns, allows data entry from image of other tax returns and prepares payments for deposit. When modifications and/or development of new software are required, the department provides Scan-Optics with all requested modifications or changes to the functionality in writing.</p> <p>As stated in our Strategic Plan, the mission of the Department of Revenue is to provide a comprehensive approach to process and manage taxpayer information that consists of tax returns, remittances and correspondence. Tax return and remittance processing currently uses Scan-Optics hardware and software for integration to our mainframe Revenue Integrated Tax System (RITS). The Scan-Optics scanners produce the tiff images that are transported to our FileNet image retrieval system used by the entire Revenue Department, including our tax enforcement officers, auditors and special investigations units in the out-of-state offices.</p>			

(2) explanation of the need for or requirement placed on the procuring agency to acquire the service :

Over time, the department needs to modify and/or develop new software for the Scan-Optics system because of legislative changes to existing tax laws or implementing new taxes. The department may also need to have software programs modified in order to more efficiently process the current workload.

The current Scan-Optics system scans tax forms for the FileNet image retrieval system, allows key-from-image data capture, allows two-dimensional barcode data capture and prepares remittances for bank deposit. The Revenue Department also uses this Scan-Optics system to process lockbox payments for the following State Departments: Health, Safety, Finance and Administration, Board of Paroles, Corrections and Agriculture. During fiscal year 2003-2004, the department collected \$9.1 billion in State taxes and fees. In addition to collecting State taxes, \$1.6 billion of local sales tax was collected by the department for local governments.

Since we have been utilizing Scan-Optics, Inc. high tech equipment for the past 17 years, it is very important that modifying and/or developing new software on this equipment be kept current and updated so the collection of billions of dollars in State tax revenue can be deposited timely.

This Scan-Optics system also provides the critical data capture function for RITS, the Department of Revenue's principal computer system for maintaining taxpayer information. It is crucial to the mission and vision of the Department of Revenue that deposits and information passed to RITS are correct.

(3) explanation of whether the service was ever bought by the procuring agency in the past, and if so, what method was used to acquire it :

The department entered into a non-competitive negotiation contract with Scan-Optics, Inc. in August 2000. This contract covers the period August 1, 2000 to July 31, 2005 (including two one year options to renew). Prior to August 2000, software and hardware was procured through the Purchasing Division.

(4) name and address of the proposed contractor's principal owner(s) :
(not required if proposed contractor is a state education institution)

Scan-Optics, Inc.

169 Progress Drive

Manchester, CT 06040-2294

(5) evidence that the proposed contractor has experience in providing the service and evidence of the length of time the contractor has provided service :

During the past five years, we had a personal service contract for technical support and hardware upgrade. Prior to this period, the services were procured through a purchase order from the Purchasing Division.

Scan-Optics, Inc. has been recognized internationally as an innovator and leading solution provider in the information management and imaging business for over 35 years. The company applies state-of-the-art technology and expertise to high-speed imaging, recognition, data capture, in addition to archive and retrieval solutions. The Department of Revenue has been a Scan-Optics customer for the past 17 years.

(6) documentation of OIR endorsement of the Non-Competitive procurement request :
(required only if the subject service involves information technology)

select one:

☐

Documentation Not Applicable to this Request

☒

Documentation Attached to this Request

(7) documentation of Department of Personnel endorsement of the Non-Competitive procurement request :
(required only if the subject service involves training for state employees)

select one:

☒

Documentation Not Applicable to this Request

☐

Documentation Attached to this Request

(8) description of procuring agency efforts to identify reasonable, competitive, procurement alternatives rather than to use non-competitive negotiation :

The Department of Revenue's research efforts concluded that no other vendor could provide the immediate response and software familiarity necessary to make software modifications based on tax form changes mandated by the State Legislature. Although other vendors may be able to provide some assistance, they would not meet our overall requirement needs.

(9) justification of why the state should acquire the service through Non-Competitive Negotiation rather than through a competitive process :
(Being the "only known" or "best" service provider to perform the service as desired will not be deemed adequate justification.)

Scan-Optics manufactured the 9000T scanners and the 9000M scanner utilized by the Department of Revenue. These scanners are programmed using ScanGen software and tax returns and remittances are processed using VISTA key-from-image data capture software. It is not feasible or practical to use the RFP process or competitive negotiations in this case for the following reasons:

1. Scan-Optics, Inc. is the sole supplier of the ScanGen and VISTA software.
2. Neither ScanGen nor VISTA software are sold through any other channel. Therefore, no other development resource is available.
3. Disruption of scanner services could result in the State Treasurer's Office not having access to the tax revenue collected and as a result, investment income from these funds would be lost. Also, the department could be in violation of statutes on deposit of State tax revenue.

AGENCY HEAD REQUEST SIGNATURE:
(must be signed by the ACTUAL procuring agency head as detailed on the Signature Certification on file with OCR — signature by an authorized signatory will be accepted only in documented exigent circumstances)



SIGNATURE DATE:

3/31/05



PHIL BREDESEN
Governor

**STATE OF TENNESSEE
DEPARTMENT OF REVENUE
ANDREW JACKSON STATE OFFICE BUILDING
NASHVILLE, TENNESSEE 37242**

LOREN L. CHUMLEY
Commissioner

TO: Commissioner Dave Goetz
Department of Finance and Administration

ATTN: Priscilla Wainwright
Office of Contracts Review

FROM: Commissioner Loren L. Chumley
Department of Revenue

DATE: March 29, 2005

SUBJECT: Request to Enter into Non-Competitive Negotiation Contract

RECEIVED
MAR 31 2005
FISCAL REVIEW

This is to request that the Department of Revenue be allowed to enter into non-competitive negotiation with Scan-Optics Inc. for a maximum cost of \$500,000 from the time period of August 1, 2005 through July 31, 2010 (including 2 one year options for renewal).

1. Description of Service to be Acquired

Scan-Optics, Inc. provides technical support and development upgrades on the Department of Revenue 9000T and 9000M scanners using ScanGen software and VISTA key from image data capture software. This system scans certain tax returns, allows data entry from image of other tax returns and prepares payments for deposit. When modifications and/or development of new software are required, the department provides Scan-Optics with all requested modifications or changes to the functionality in writing.

As stated in our Strategic Plan, the mission of the Department of Revenue is to provide a comprehensive approach to process and manage taxpayer information that consists of tax returns, remittances and correspondence. Tax return and remittance processing currently uses Scan-Optics hardware and software for integration to our mainframe Revenue Integrated Tax System (RITS). The Scan-Optics scanners produce the tiff images that are transported to our FileNet image retrieval system used by the entire Revenue Department, including our tax enforcement officers, auditors and special investigations units in the out-of-state offices.

2. Explanation of the Need for the Procuring Agency to Acquire the Service

Over time, the department needs to modify and/or develop new software for the Scan-Optics system because of legislative changes to existing tax laws or implementing new taxes. The department may also need to have software programs modified in order to more efficiently process the current workload. The current Scan-Optics system scans tax forms for the FileNet image retrieval system, allows key-from-image data capture, allows two-dimensional barcode data capture and prepares remittances for bank

deposit. The Revenue Department also uses this Scan-Optics system to process lockbox payments for the following State Departments: Health, Safety, Finance and Administration, Board of Paroles, Corrections and Agriculture. During fiscal year 2003-2004, the department collected \$9.1 billion in State taxes and fees. In addition to collecting State taxes, \$1.6 billion of local sales tax was collected by the department for local governments.

Since we have been utilizing Scan-Optics, Inc. high tech equipment for the past 17 years, it is very important that modifying and/or developing new software on this equipment be kept current and updated so the collection of billions of dollars in State tax revenue can be deposited timely.

This Scan-Optics system also provides the critical data capture function for RITS, the Department of Revenue's principal computer system for maintaining taxpayer information. It is crucial to the mission and vision of the Department of Revenue that deposits and information passed to RITS are correct.

3. Explanation of Whether the Service was Ever Bought by the Procuring Agency in the Past, and if so, What Method was Used to Acquire It

The department entered into a non-competitive negotiation contract with Scan-Optics, Inc. in August 2000. This contract covers the period August 1, 2000 to July 31, 2005 (including two one year options to renew). Prior to August 2000, software and hardware was procured through the Purchasing Division.

4. Name and address of the proposed Contractor's Principal Owner(s)

Scan-Optics, Inc.
169 Progress Drive
Manchester, CT 06040-2294

5. Evidence that the Proposed Contractor has Experience in Providing the Service and Evidence of the Length of Time the Contractor has Provided Service

During the past five years, we had a personal service contract for technical support and hardware upgrade. Prior to this period, the services were procured through a purchase order from the Purchasing Division.

Scan-Optics, Inc. has been recognized internationally as an innovator and leading solution provider in the information management and imaging business for over 35 years. The company applies state-of-the-art technology and expertise to high-speed imaging, recognition, data capture, in addition to archive and retrieval solutions. The Department of Revenue has been a Scan-Optics customer for the past 17 years.

6. Documentation of OIR Endorsement of the Non-Competitive Procurement Request

Please see attached.

7. Documentation of Department of Personnel Endorsement of the Non-Competitive Procurement Request (required only if the subject service involves training for state employees)

Not applicable.

8. Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives

The Department of Revenue's research efforts concluded that no other vendor could provide the immediate response and software familiarity necessary to make software modifications based on tax form changes mandated by the State Legislature. Although other vendors may be able to provide some assistance, they would not meet our overall requirement needs.

9. Justification of Why the State Should Acquire the Service through Non-Competitive Negotiation rather than Through a Competitive Process

Scan-Optics manufactured the 9000T scanners and the 9000M scanner utilized by the Department of Revenue. These scanners are programmed using ScanGen software and tax returns and remittances are processed using VISTA key-from-image data capture software. It is not feasible or practical to use the RFP process or competitive negotiations in this case for the following reasons:

1. Scan-Optics, Inc. is the sole supplier of the ScanGen and VISTA software.
2. Neither ScanGen nor VISTA software are sold through any other channel. Therefore, no other development resource is available.
3. Disruption of scanner services could result in the State Treasurer's Office not having access to the tax revenue collected and as a result, investment income from these funds would be lost. Also, the department could be in violation of statutes on deposit of State tax revenue.

Summary:

The Department of Revenue collects and deposits billions of dollars in state tax revenue with the service of the 9000T and 9000M scanners. Scan-Optics is the only uniquely qualified service provider able to provide the service. The state tax revenue is used to finance and operate most state programs and if we fail to keep the software and hardware on these machines current and up to date, the State would lose significant funding from deposits not being timely made and our office would be in violation of the law on deposits of State tax revenue.

Approval by Actual Department Head:


Loren L. Chumley, Commissioner - Dept. of Revenue

3/31/05
Date

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
Department of Revenue
AND
Scan Optics, Inc.**

This Contract, by and between the State of Tennessee, Department of Revenue, hereinafter referred to as the "State" and Scan-Optics, Inc., hereinafter referred to as the "Contractor," is for the provision of technical support and development upgrades for computer scanner software , as further defined in the "SCOPE OF SERVICES."

The Contractor is a for-profit corporation. The Contractor's address is

Scan Optics, Inc.
169 Progress Drive
Manchester, CT 06040
Tel: (860) 645-7878
Fax: (860) 645-7995

The Contractor's place of incorporation or organization is Connecticut.

A. SCOPE OF SERVICES:

- A.1. The Contractor will provide technical support and development upgrades on the Model 9000T and 9000M Scanner using ScanGen software and a Windows based perfection/correction system called VISTA. This system scans certain tax returns, allows data entry from image of other tax returns and prepares payments for deposit. When modifications and/or development of new software are required, the State will provide the Contractor with all requested modifications or changes to the functionality in writing using the Contractor change control procedure. The Contractor will:
 - A.1.a. Notify the State in writing of the time and cost estimate for the completion of a Change Request within five (5) working days from receipt of the written Change Request.
 - A.1.b. Not begin actual modifications or changes until the changes are approved in writing by the State.
 - A.1.c. Provide the State with complete written documentation of all completed changes made to programs within five (5) working days after completion of an authorized Change Request.
 - A.1.d. Complete a thorough testing of all programming changes to include all modules that could be effected by the programming change. Written documentation of test plans and test results will be delivered to TDOR.
 - A.1.e. Not consider Change Requests complete until the Scan-Optics and TDOR Project Managers have agreed in writing that the production System has been tested and is working per the Change Request requirements and is ready for implementation.
 - A.1.f. Inform TDOR Project Manager in writing of the time impact to the overall project, if the requested change is done as a priority.

B. CONTRACT TERM:

- B.1. Contract Term. This Contract shall be effective for the period commencing on August 1, 2005 and ending on September 30, 2008. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.
- B.2. Term Extension. The State reserves the right to extend this Contract for an additional period or periods of time representing increments of no more than one year and a total contract term of no more than five (5) years, provided that the State notifies the Contractor in writing of its intention to do so at least thirty [30] days prior to the contract expiration date. An extension of the term of this Contract will be effected through an amendment to the Contract. If the extension of the Contract necessitates additional funding beyond that which was included in the original Contract, the increase in the State's maximum liability will also be effected through an amendment to the Contract and shall be based upon rates provided for in the original contract.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Five Hundred Thousand Dollars (\$500,000). The Service Rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The Service Rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the Service Rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

- C.2. Compensation Firm. The Service Rates and the Maximum Liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.
- C.3. Payment Methodology. The Contractor shall be compensated based on the Service Rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Contractor's compensation shall be contingent upon the satisfactory completion of units of service or project milestones defined in Section A. The Contractor shall be compensated based upon the following Service Rates:

SERVICE UNIT/MILESTONE**AMOUNT****LABOR**

_____ Hours at \$____.00 per hour for year 1	\$[NUMBER AMOUNT]
_____ Hours at \$____.00 per hour for year 2	\$[NUMBER AMOUNT]
_____ Hours at \$____.00 per hour for year 3	\$[NUMBER AMOUNT]

TOTAL LABOR COSTS**TRAVEL**

Travel Expenses for On-Site Service at a maximum of \$_____ per trip.
Actual commercial transportation or mileage computed at the State rate will be reimbursed up to maximum of \$_____ per trip.

_____ Trips for Year 1	\$(NUMBER AMOUNT)
_____ Trips for Year 2	\$(NUMBER AMOUNT)
_____ Trips for Year 3	\$(NUMBER AMOUNT)
TOTAL TRAVEL COSTS	\$(NUMBER AMOUNT)
TOTAL COSTS	\$(NUMBER AMOUNT)

The Contractor shall submit monthly invoices, in form and substance acceptable to the State with all of the necessary supporting documentation, prior to any payment. Such invoices shall be submitted for completed units of service or project milestones for the amount stipulated. Such invoices shall, at a minimum, include the name of each individual, the individuals' job title, the number of hours worked during the period, the applicable Payment Rate, the total compensation requested for the individual, and the total amount due the Contractor for the period invoiced

- C.4. Travel Compensation. Compensation to the Contractor for travel, meals, or lodging shall be subject to amounts and limitations specified in the "State Comprehensive Travel Regulations," as they are amended from time to time and shall not exceed [WRITTEN DOLLAR AMOUNT] (\$(NUMBER AMOUNT)) during the period of the Contract.
- C.5. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.
- C.6. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this contract, not to constitute proper remuneration for compensable services.
- C.7. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.
- C.8. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.
- D. STANDARD TERMS AND CONDITIONS:
- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in

no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract pertaining to "Conflicts of Interest" and "Nondiscrimination" (sections D.6. and D.7.). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Records. The Contractor shall maintain documentation for all charges against the State under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.9. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.10. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.11. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.12. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and

other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.

- D.13. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.14. Force Majeure. The obligations of the parties to this contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.
- D.15. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.16. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under ***Tennessee Code Annotated***, Sections 9-8-101 through 9-8-407.
- D.17. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.18. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.19. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- E. SPECIAL TERMS AND CONDITIONS: (Unless otherwise stated, model language is required)
- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below or to such other party, facsimile number, or address as may be hereafter specified by written notice.

The State:

Don Derrick, Director
ITR Division
Tennessee Department of Revenue
7th Floor, Andrew Jackson State Office Building
500 Deaderick Street
Nashville, TN 37242
Tel: (615) 741-9082
FAX: (615) 532-2701

The Contractor:

Dick Goyette
Scan-Optics, Inc.
169 Progress Drive
Manchester, CT 06040
Tel: (860) 645-7878
Fax: (860) 645-7995

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the telefax machine at the receiving location and receipt is verbally confirmed by the sender if prior to 4:30 p.m. CST. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission.

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. State Ownership of Work Products. The State shall have all ownership right, title, and interest, including ownership of copyright, in all work products created, designed, developed, derived, documented, installed, or delivered to the State under this Contract. The State shall have royalty-free and unlimited rights to use, disclose, reproduce, or publish, for any purpose whatsoever, all said work products. The Contractor shall furnish such information and data upon request of the State, in accordance with the Contract and applicable State law
- E.5. Workpapers Subject to Review. The Contractor shall make all audit, accounting, or financial analysis workpapers, notes, and other documentation available for review by the Comptroller of the Treasury or his representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract
- E.6. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:
- No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, and entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, subcontracts, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients of federally appropriated funds shall certify and disclose accordingly.
- E.7. Public Funding Notice. All notices, informational pamphlets, press releases, research reports, signs, and similar public notices prepared and released by the Contractor relative to this Contract shall include the statement, "This project is funded under an agreement with the State of Tennessee." Any such notices by the Contractor shall be approved by the State.
- E.8. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed.

- E.9 Confidentiality of Records. Strict standards of confidentiality of records shall be maintained in accordance with the law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of State law and ethical standards and shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with State law and ethical standards.

The Contractor will be deemed to have satisfied its obligations under this section by exercising the same level of care to preserve the confidentiality of the State's information as the Contractor exercises to protect its own confidential information so long as such standard of care does not violate the applicable provisions of the first paragraph of this section.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

- E.10. Public Accountability. If this Contract involves the provision of services to citizens by the Contractor on behalf of the State, the Contractor agrees to establish a system through which recipients of services may present grievances about the operation of the service program, and the Contractor agrees to display a sign stating:

"NOTICE: This Contractor is a recipient of taxpayer funding. If you observe an employee engaging in any activity which you consider to be illegal or improper, please call the State Comptroller's toll free hotline: 1-800-232-5454"

Said sign shall be displayed in a prominent place, located near the passageway(s) through which the public passes to receive State funded services.

- E.11. Environmental Tobacco Smoke. Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the Tennessee "Children's Act for Clean Indoor Air of 1995," the Contractor shall prohibit smoking of tobacco products within any indoor premises in which services are provided pursuant to this Contract to individuals under the age of eighteen (18) years. The Contractor shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Contract.

- E.12. Date/Time Hold Harmless. As required by **Tennessee Code Annotated**, Section 12-4-118, the contractor shall hold harmless and indemnify the State of Tennessee; its officers and employees; and any agency or political subdivision of the State for any breach of contract caused directly or indirectly by the failure of computer software or any device containing a computer processor to accurately or properly recognize, calculate, display, sort or otherwise process dates or times.

- E.13. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State.

In the event of any such suit or claim, the Contractor shall give the State immediate notice thereof and

shall provide all assistance required by the State in the State's defense. The State shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by **Tennessee Code Annotated**, Section 8-6-106.

- E.14. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in **Tennessee Code Annotated**, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System, provides that if a retired member returns to State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor may be required to repay to the Tennessee Consolidated Retirement System the amount of retirement benefits the Contractor received from the Retirement System during the period of this Contract

IN WITNESS WHEREOF:

Scan-Optics, Inc:

[NAME AND TITLE]

Date

Tennessee Department of Revenue:

Loren L. Chumley, Commissioner

Date

APPROVED:

DEPARTMENT OF FINANCE AND ADMINISTRATION:

M. D. Goetz, Jr., Commissioner

Date

DEPARTMENT OF PERSONNEL:

Randy C. Camp, Commissioner

Date

COMPTROLLER OF THE TREASURY:

John G. Morgan, Comptroller of the Treasury

Date